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Lansing Office
July 12, 1996

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Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, D.C. 20554

<u>VIA OVERNIGHT MAIL</u>

Re: Pay Telephone Rulemaking
CC Docket No. 96-128
FCC No. 96-254
Reply Comments of Michigan Pay Telephone Association

Dear Sir/Madam:

Enclosed for filing please find the original and 14 copies of the Reply Comments of Michigan Pay Telephone Association in the above-referenced matter. Also enclosed is a floppy diskette with the replies provided in Word Perfect for DOS 5.1 (MPTARPLY.WP5), and in standard text (MPTARPLY.TXT).

Thank you for your assistance in this matter

Warmest regards.

Very truly yours,

BUTZEL LONG

William R. Ralls

WRR/kms
Enclosures
cc: Common Carrier Bureau
w/2 copies of enclosure
and 1 floppy diskette

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	FCC No. 96-254
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF MICHIGAN PAY TELEPHONE ASSOCIATION

Respectfully submitted,

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Dated: July 12, 1996

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SUMMARY

These reply comments are presented by the Michigan Pay Telephone Association ("MPTA"), a nonprofit incorporated trade association representing the interests of independent payphone service providers in Michigan. The MPTA files these reply comments in response to comments advocating a nationwide local coin rate for all calls originated from payphones, as addressed in ¶ 21 of the NPRM.

1. None of the comments can point to specific authority in the statute or in the intent of Congress to authorize a uniform national local calling rate for calls placed from payphones. Neither the Act nor the Conference Report authorize a nationwide coin rate, or indicated an intent to so authorize. The Act was aimed at compensating PSPs for calls for which independent providers have not been fairly compensated but for which BOC payphone providers have been fairly compensated: in particular carrier access code calls and subscriber 800 calls.

2. Nothing in the statute or the comments demonstrates that ensuring fair compensation for payphone providers requires a nationwide rate for local calls placed from payphones. The solution to assuring fair compensation for local calls is not a nationwide rate. The solution is to end the subsidies and allow the rates in those states to increase to cover costs. A nationwide rate creates

its own problems, and will itself force subsidies in those regions where the nationwide rate does not cover costs. In the event this approach is given serious consideration, MPTA would recommend that states, like Michigan, that have already deregulated local payphone rates, be exempt from the nationwide local coin rate.

3. The Commission should not adopt the RBOC proposal for requiring state determinations within 90 days of the effective date of regulations. If, however, this approach is given serious consideration, MPTA would recommend that states, like Michigan, that have already deregulated local payphone rates, be exempt from the requirements.

4. The Commission should let the market set the local calling rate from payphones, as recommended by MPTA and several other parties, and as recommended as an alternative even by proponents of a nationwide rate. However, care should be taken that the LECs are not allowed to subsidize payphone service, and that the IPPs are fairly compensated for those calls -- carrier access code calls and subscriber 800 calls -- for which they have historically received no compensation.

MPTA recommends that the Commission allow the market to set the local coin rate, and the Commission concentrate on how best to enforce the anti-subsidy and anti-discrimination requirements of Section 276.

Before the
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REPLY COMMENTS OF MICHIGAN PAY TELEPHONE ASSOCIATION

1. Introduction

On June 25, 1996, the Michigan Pay Telephone Association ("MPTA") filed its initial comments in this docket. Those comments were directed primarily toward paragraphs 20-22 of the Notice of Proposed Rulemaking ("NPRM"), and specifically advocated that a nationwide local coin rate for payphones was not contemplated by Congress and is not necessary.

The issue of whether the Commission should adopt a nationwide coin rate for local calls placed from payphones was addressed by several parties. MPTA files these comments in response to those comments, and in support of those comments favoring a market approach.

2. Reply Comments

A. The Legislative Requirement to "Ensure" Fair Compensation Does Not Authorize a Nationwide Local Coin Rate

The issue of the intent of Congress with regard to a national uniform rate for local calls from payphones relates to Section 276 b(1)(A), which states:

> "(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation."

The initial comments have read much more into that provision than is actually there. Specifically, the issue addressed in the comments is whether the requirement to create a plan to ensure that payphone providers are compensated for every call also requires that such compensation be ensured <u>in the same manner</u> for every type of call. For example, the comments of the American Public Communications Council ("APCC"), at page 9, take the position that the Commission must take a uniform approach to each type of call, and suggests that any other approach would be a legal error.

However, there is no such authority in the Act. One intent of the Act is to bolster competition in the telecommunications industry. It is incongruous with that intent to read into the phrase "ensure that all payphone providers are fairly compensated" an intent to make such a sweeping change as to require a uniform rate for calls for which there is already a compensation mechanism. If such had been the intent, the Congress would have state that intent expressly. As Bell Atlantic indicated at page 1 of its comments:

> "Congress did not intend to give the Commission authority over rates for local coin services. These are intrastate services and have always been regulated by the State commissions. Nothing in section 276 changes that."

The focus of Congress was on addressing access code and subscriber 800 calls where the PSPs have historically not been compensated. The intent of Congress was not to take away from the states their traditional authority to set rates for local calls from payphones, or the authority of the states to decide to let the market set the rate. Congress instead assumed that a state regulatory body setting "just and reasonable" rates would be providing for "fair compensation." The intent of the Act was instead to provide a plan for compensation where PSPs have not collected compensation on a per call basis. Consequently, neither the Act nor the Conference Report discussed the possibility of a nationwide local coin rate. The clear implication is that, since Congress did not address it, Congress did not intend to grant such authority. Nothing in the comments of other parties can change this lack of intent.[1]

[1] For more discussion of the evidence of the lack of Congressional intent to establish a nationwide local coin rate, see pages 3-6 of MPTA's initial comments.

B. The Commission Should Not Adopt a Nationwide Local Coin Rate

Regardless of the authority or lack of authority in the Commission to adopt a nationwide local calling rate, such a calling rate is not necessary to meet the statutory mandate to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone."

The Commission in the NPRM, at ¶ 15, addressed the issue of how to ensure fair compensation by listing the types of calls made from payphones.[2] The Commission reasons, quite properly, that "ensuring" fair compensation is only necessary where types of calls are not already being fairly compensated.

The APCC in its comments challenges this reasoning, instead arguing that a uniform approach to all five types of calls, including local calls, is required. MPTA disagrees with this approach because these types of calls are fundamentally different and should not be addressed in the same manner. Local coin calls are paid for by the end user who places the call at the set. Carrier access code calls and subscriber 800 calls are different in that the payphone provider is not compensated by the end

[2] The types of calls are:

1) Coin calls;
2) Directory assistance calls;
3) Operator service ("0+" and "0-") calls;
4) Access code calls (using e.g., "10XXX" codes and "1-800" or "950" carrier access numbers); and
5) Subscriber 800 calls.

user in the ordinary course of business. Absent a regulatory compensation plan, the only way a payphone provider can assure payment for carrier access code calls or subscriber 800 calls is to have a policy to block those calls unless and until the payphone provider and the IXC reach agreement on compensation. Under TOCSIA, blocking of "10XXX", "950", and "1-800" calls is not allowed for public policy reasons. Therefore, the only market leverage PSPs would have to receive compensation from IXCs is foreclosed under the law. Consequently, another method of compensation for the use of payphones for carrier access code and subscriber 800 numbers must be created or the PSPs will be forced to continue to provide IXCs with access and subscriber 800 service for free. This is the reason Congress initially directed the FCC to establish a per call compensation plan for those calls for which PSPs are not fairly compensated. The case with local coin calls is entirely different. Consequently, it is appropriate to treat local coin calls differently than carrier access code calls and subscriber 800 calls.

With regard to its argument that local coin calls in particular should be subject to a nationwide rate, the APCC first argues that a nationwide rate is necessary by citing figures from states that have not raised the local rate in several years. The reasoning of those states is, as the APCC puts it, the historical view that public payphone service is an extension of universal service, resulting in artificially low rates that are subsidized. The APCC goes on to conclude that the law requires a minimum compensation level to break away from the unhealthy dependence on cross subsidies.[3]

The APCC does state a valid problem that needs to be recognized. Indeed, compensation for carrier access code calls and subscriber 800 calls will go a long way to correct much of the problem. The solution, however, is not a nationwide local rate. The solution is to end the subsidies and allow the rates in those states to increase to cover costs. A nationwide rate creates its own problems, and will itself force subsidies in those regions where the nationwide rate does not cover costs. Unlike interLATA calls, which use national and international networks, local calls are, by definition, local in nature. The primary costs are related to costs of local loops and usage of local switches and other equipment. Those costs vary from state to state and region to region much more than the costs of interLATA toll calls. A nationwide rate that is fairly compensatory in one state may produce a windfall in another state and a loss of money in yet another state. In those states where the nationwide rate does not cover costs or allow a profit, the LECs are not only not prevented from subsidizing local calls, the LECs in those states are <u>required</u> to subsidize local calls. From the standpoint of avoiding subsidization of LEC

[3] APCC Comments, pages 12, 14-15.

payphones, a nationwide local rate would accomplish just the opposite. To put it another way, the way to end dependence on cross subsidy is not to enforce an inflexible rule that effectively forces cross subsidy. The better path is to let the local rates vary throughout the country, and concentrate on preventing LEC subsidization of payphones.

The APCC next argues that a nationwide rate would be convenient for consumers. That, however, is far from the purpose of the Act. The Act's purpose is to ensure fair compensation, which means the opportunity to cover costs and make a reasonable profit. A rate of 5¢ per call would be very convenient to consumers, but it would be confiscatory to the provider of the service. Moreover, as stated earlier, costs vary from region to region. If the nationwide rate is set far above cost in a low cost region, it is doubtful that consumers in that region will feel "convenienced" at paying a higher rate than they would otherwise pay just to allow everyone to pay the same rate.

The APCC next discusses the removal of LEC payphones from the rate base and how that will impact upon state procedures and policies, and concludes that the Commission cannot rely upon proceedings in other jurisdictions that it hopes will lead to fair results.[4] This is nothing more than a criticism of federalism. The other

[4] APCC Comments, page 18.

jurisdictions the APCC refers to are the state legislatures and commissions. The APCC goes on to argue that, after rates had been set by states, the Commission would have to examine each state decision. This is also incorrect. The statute only requires that the Commission rules ensure that providers are fairly compensated. The statute does not prevent the Commission from doing so by finding that market forces or state determinations of just and reasonable rates will itself result in fair compensation for local calls.

Nothing in the statute or the comments demonstrates that ensuring fair compensation for payphone providers requires a nationwide rate for local calls placed from payphones.

If, however, this approach is given serious consideration, MPTA would recommend that states, like Michigan and Iowa, that have already deregulated local payphone rates, be exempt from the requirements The Commission should restrict any nationwide rate as being only a transitional phase on the road to letting the market set the rate. Re-establishing regulated rates in states that have already moved to a market approach would represent a step away from competition. Consequently, only those states that currently set the local coin rates from payphones should be subject to any nationwide local coin rate, and any state that wishes to be exempt from the nationwide rate could be made exempt if it decides to deregulate local coin rates.

C. The Commission Should Not Adopt the RBOC Proposal for Requiring State Determinations Within 30 Days of the Effective Date of Regulations

The RBOC Coalition, at pages 22-23 of their comments, propose that the Commission require the states to determine rates according to Commission standards within 90 days of the effective date of the regulations. Under this proposal, the Commission would establish a definition of fair compensation, and then allow the states to establish the local rates applying that definition to local cost factors.

This proposal should be rejected in favor of a market approach (See part D). Even the Coalition's own members could not agree to support this proposal. US West, Southwestern Bell, and BellSouth broke with the coalition to instead urge deregulation.

The APCC, which proposes a nationwide rate, also rejects the RBOC Coalition approach, stating its second approach as being the market approach at page 13:

> "The Commission could simply determine that the market should govern what rates are charged for local coin calls. As discussed below, APCC believes that this option, which is a reasonable corollary to the Congressional mandate to remove LEC payphones from the regulated local exchange rate base, must be adopted if the Commission does not adopt a nationwide local coin rate of 40 cents per call."

Other than in the RBOC comments, there would appear to be little support for the Coalition's proposal. If, however, this approach is given serious consideration, MPTA would recommend that states. like Michigan and Iowa, that have already deregulated local payphone rates, be exempt from the requirements. As the Coalition states, its proposal is a transitional approach to market-based local coin rates. If states that have already moved to a market approach are forced to re-establish local coin rates, the regulations would represent a step away from competition. Consequently, only those states that currently set the local coin rates from payphones should be required to follow the proposal, if adopted, and any state that wishes to be exempt could be made exempt if it decides to deregulate local coin rates.

D. The Commission Should Allow the Market to Set the Local Calling Rate

In its initial comments, MPTA addressed the three alternatives addressed in the NPRM, and went on to suggest a fourth alternative: letting the market set the local coin rate. Several other parties commented favorably on the market approach, including the APCC, which adopted the market approach as its second choice.

As Southwestern Bell states at page 3 of its comments:

> "Deregulation of payphone rates, including local sent-paid rates, is consistent with the deregulatory purpose of the Act. Throughout the Act, Congress has directed the Commission to rely on private negotiations to set standards and rates, subject to regulatory intervention only where that private negotiation fails. In the absence of some showing that the private market solution fails in the local coin call context, there is no reason to permit or require regulation. Section 276 places the Commission in the primary role as guarantor that compensation for all calls be "fair and reasonable." <u>Because what the</u>

open market produces is fair and reasonable by definition, the market price is the rate that the Commission should allow to prevail." [Emphasis added; footnote omitted]

US West and BellSouth also support the market approach. The market approach is the best approach because it works Payphone rates from independent providers in Michigan have never been regulated by the Public Service Commission. Yet, in Michigan, independent payphone service providers have on average charged less than the LEC for coin calls. The reason is that a competitive market (each IPP has to compete against the incumbent LEC and its rate) has largely prevented increases in IPP rates. Since November 30, 1995, LEC payphone local coin rates have also been deregulated.

MPTA has one caveat to the market approach. The market is a stronger indicator than regulation only as long as there is effective competition. Competition will flourish only so long as the LECs are not allowed to subsidize payphone service, and so long as the IPPs are fairly compensated for those calls -- carrier access code and subscriber 800 -- for which they have historically received no compensation. Therefore, MPTA recommends that the Commission allow the market to set the local coin rate, and the Commission concentrate on how best to enforce the anti-subsidy and anti-discrimination requirements of Section 276.

3. Conclusion

In summary, nothing in the initial comments establishes that a nationwide rate for local calls was contemplated by or authorized by Congress. Comments indicating that a nationwide coin rate is required to carry out the intent of the Act must be rejected. Arguments for a nationwide rate ignore the power of the market. Indeed, a nationwide rate would be counterproductive and would lead to windfalls in some regions and confiscatory rates in other regions. A nationwide rate, far from ending the reliance on subsidy, would force continued subsidization by LECs of local calls. Nor should the Commission adopt the RBOC proposal to establish a definition of fair compensation for local calls, and require the states to establish a local rate using that definition within 90 days. Even if such an approach is considered, it should be considered only a transition, and states that have already deregulated the local calling rate should be exempt.

The best approach is to let the market set local call rates, while the Commission concentrates on preventing subsidization and providing the compensation Congress did intend: compensation for carrier access code calls and subscriber 800 calls.

Respectfully submitted,

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Dated: July 12, 1996

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

o Microfilm, microform, certain photographs or videotape.

o Other materials which, for one reason or another, could not be scanned into the RIPS system.

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